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Via E-Filing

February 2, 2022

The Honorable Sarah L. Cave
U.S. Magistrate Judge
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, NY 10007

Re: Timothy Cherotti and Rosebud Ventures, LLC v. Exphand, Inc. and Frank Nemirofsky; Civil Action No. 20-cv-11102 (SLC) ;Defendants' Response to Plaintiffs Letter-Motion for Discovery Conference

Dear Judge Cave:

We represent the Defendants in the above-stated action and respond to Plaintiffs' request for a Discovery Conference pursuant to your Individual Practices in Civil Cases (the "Practices"), Section II (C)(2) and Local Civil Rule 37.2.

Briefly stated, there is no need for a Discovery Conference at this time, as I informed Plaintiffs' Counsel that Mr. Nemirofsky would be available during the week of either February 21 or 28. Hence, there is no dispute requiring the Court's intervention. Prior to Mr. Plaut's filing of his Letter-Motion, I had been in communication with Mr. Plaut during the week of Friday, January 28 at 5:18 PM and informed him that Mr. Nemirofsky was recovering from COVID and that he was scheduling eye surgery on Monday at which time I would know his availability.

By utilizing the Court's Practices in II(C)(2) to reargue his case, Mr. Plaut distorts the intent of the Court's Practice, which is to bring to the attention of the Court a real impasse. This is not such a case, as the above-mentioned communication indicates.

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Finally, the request for a deposition date for Marie Nemirofsky is inappropriate as she is not a party defendant in the current Complaint and I do not represent her, as I have repeatedly informed Mr. Plaut. Nevertheless, Mr. Plaut persists in his requests.

Respectfully,



Paul M. Kaplan

PK:pjc
Enclosure

Defendants' Letter-Motion (ECF No. 63), which the Court interprets as a request to cancel the telephone conference scheduled for February 8, 2022, is GRANTED, and the telephone conference is CANCELLED.

In light of the circumstances delaying Mr. Nemirofsky's deposition, the deadline to complete all discovery is extended to **March 4, 2022**. The parties shall meet and confer to select a date during the weeks of February 21 or February 28 for Mr. Nemirofsky's deposition. If Plaintiffs seek to depose Mrs. Nemirofsky, who is not presently a Defendant in this action, then they must serve her with a subpoena pursuant to Fed. R. Civ. P. 45.

The Clerk of Court is respectfully direct to cancel the February 8, 2022 telephone conference, and to close ECF No. 63.

SO ORDERED 2/4/2022



SARAH L. CAVE
United States Magistrate Judge